



# The Attorney General of Texas

March 18, 1981

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Honorable James E. Nugent, Chairman  
Railroad Commission of Texas  
P. O. Drawer 12967  
Austin, Texas 78711

Opinion No. MW-307

Re: Whether the Railroad Commission must provide copies of copyrighted maps requested under the Open Records Act

Dear Mr. Poerner:

You inform us that the Railroad Commission has on file copyrighted maps on which it indicates the locations of drilling activity and oil wells. These maps are available for public inspection at your offices. You ask whether you must provide copies of such maps when requested to do so by a member of the public.

The Open Records Act requires the custodian of public information to "produce such information for inspection or duplication." V.T.C.S. art. 6252-17a, §4. He is prohibited by the act from making any inquiry of a person who seeks to inspect and copy public records beyond what is necessary to establish identification and the records being requested. Section 5(b).

In contrast, the copyright law gives the copyright holder the exclusive right to reproduce his work, subject to another person's right to make fair use of it. 17 U.S.C. §§ 106, 107 (1976). Any copying of such records must be consistent with the copyright law. A state that infringes a copyright may be liable in damages to the holder. Mills Music, Inc. v. Arizona, 591 F. 2d 1278 (9th Cir. 1979).

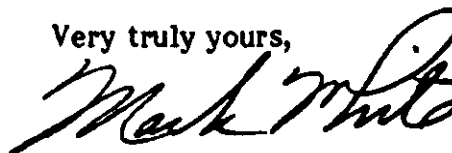
Thus, the custodian of copyrighted records, when asked for a copy of them under the Open Records Act, is faced with a difficult problem. He can make the copy as a ministerial act and risk a suit for infringement. He can seek to determine whether the proposed use is a fair use. This is a difficult task at best, since it requires an inquiry into the purpose of the use and its effect on the potential market for the copyrighted work. It is rendered impossible by the Open Records Act's prohibition against making any such inquiry of the requestor. Moreover, the supremacy clause of the United States Constitution would prohibit the custodian from following the Open Records Act where it conflicts with the copyright law. See Antoine v. Washington, 420 U.S. 194 (1975).

The custodian of public records must comply with the copyright law and is not required to furnish copies of such records that are copyrighted. Members of the public have the right to examine copyrighted materials held as public records and to make copies of such records unassisted by the state. Of course, one so doing assumes the risk of a copyright infringement suit.

S U M M A R Y

The Railroad Commission is not required to furnish copies of copyrighted maps to members of the public.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark White", written in a cursive style.

MARK WHITE  
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